IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1263 OF 1998

Mr. Dilip A. Bahirseth
Adult, aged 36 years,
Occ: Advocate, Indian
Inhabitant at present
residing at "Shweta
Apartment", B-11, 221-A/4,
'E' Tarabai Park, Kolhapur ...Petitioner.

V/s

1. Mr. Madhusudan Babaji
Jamdade,
aged 71 years, R/o. - K/D
Ward, Kasba Gate, Jamdade
Complex, Kolhapur.

2. State of Maharashtra ...Respondent.

Ms. Madhavi Tavanandi for the petitioner.

Mr. R.M. More, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 10th January, 2006

ORAL JUDGMENT:

1. The petitioner is challenging the order of issuance of process by the Chief Judicial Magistrate in Regular Criminal Case No. 6 of 1997 for an offence punishable under section 420 read with section 34 of the Indian Penal Code. None appears on behalf of the respondent No.1, though he is served.

2. It is alleged by respondent No.1 in the complaint that he had given an amount of Rs 6000/- to the petitioner who is a practising advocate and it is alleged that the petitioner was represented that out of this amount of Rs 6000/-, an amount of Rs 3,880/- was to be paid towards the court fees when, in fact, this amount was not required to be paid as court fees. On a complaint being filed, the Chief Judicial Magistrate, Kolhapur was pleased to direct the police to submit a report after investigating the same under section 156(3) of the Criminal Procedure Code.

3. The learned Counsel appearing on behalf of the petitioner submits that the said amount was accepted by the petitioner towards his legal fees and if at all there was any grievance regarding the conduct of the petitioner, the proper remedy for the complainant was to file a complaint before the Bar Council of Maharashtra who alone has jurisdiction to consider the cases of misconduct by its members.

4. In my view, the submission made by the learned Counsel appearing on behalf of the petitioner will have to be accepted. From the perusal of the complaint it is clear that even if the averments are taken on its face value, no offence is made out and

the proper remedy for the complainant was to file a complaint before the Bar Council of Maharashtra.

5. In the result, the order passed by the Chief Judicial Magistrate dated 19.6.1998 is set aside and quashed and the Criminal Writ Petition is allowed in terms of prayer clause (a).

6. Rule is made absolute in the above terms.

V.M. KANADE, J.